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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	No. 3:22-cr-00084-SI
)	
Plaintiff,)	DEFENDANT'S NOTICE
)	REGARDING PROPOSED JUROR
)	QUESTIONNAIRE
vs.)	
)	
TONY KLEIN)	
)	
Defendant.)	

Counsel for defendant Tony Klein has conferred with counsel for the government regarding a proposed Juror Questionnaire to be distributed to potential jurors in advance of the trial date. The government has filed a proposed jury questionnaire (ECF 75) and noted the defense objections. The defendant submits the following objections and proposals regarding content in the questionnaire the parties did not reach agreement on. All of the defendant's positions are informed by the need to curtail any pretrial research on the case by potential jurors and the need to avoid any pretrial conditioning of potential jurors.

1) The defense objects to including the case caption on the questionnaire. The defense further objects to any introductory paragraph identifying the defendant and the accusations, including objecting to the following paragraph requested by the government:

The Government has charged defendant Tony Klein in a 25-count indictment. The indictment charges him with 21 counts of violating 18 U.S.C. § 242, alleging that he sexually assaulted 12 female inmates at Coffee Creek Correctional Facility (CCCF) while employed as a corrections nurse. The indictment also charges him with four counts of violating 18 U.S.C. § 1623 for falsely denying that he ever engaged in various sexual conduct with any incarcerated woman while employed by CCCF.

2) The defense objects to inclusion of the following question (Question 36 on the government's proposed questionnaire):

TV programs that show real-life or dramatized police, prison, or legal activities are entertainment, and do not accurately portray how real-life criminal cases are handled. The law does not require the government to present forensic evidence to prove its case. Despite this, do you think you might hold it against the government if it did not present forensic evidence such as fingerprints or DNA, like what you see on these TV shows? Please explain any thoughts you have about this below.

3) The defense objects to inclusion of the first (italicized) sentence of the following question (Question 44 on the government's proposed questionnaire). The defense agrees to inclusion of the remaining text:

This case involves allegations that a male nurse working in a women's prison sexually assaulted inmates. If seated as a juror in this trial, you will hear words and phrases, including slang terms, related to body parts, such as "penis," "vagina," and

“breast,” and terms related to sexual acts, such as “blow job” or “fingering.” Is there anything about hearing such terms that would make it difficult for you to pay attention to the evidence in the case?

4) The defense objects to inclusion of the first two (*italicized*) sentences of the following question (Question 46 on the government’s proposed questionnaire). The defense agrees to inclusion of the remaining text:

Some of the alleged victims and witnesses in this case have experience with drug and/or alcohol addiction. Some may be in recovery (or no longer addicted to drugs/alcohol), while others may still be using these substances. What are your opinions about people with drug or alcohol addictions? What, if anything, do you believe is important to know when considering the testimony of these individuals?

5) The defense objects to inclusion of the following question (Question 47 on the government’s proposed questionnaire):

You may hear that witnesses in this case have been previously diagnosed with certain mental health conditions. These conditions may range from depression and anxiety to more serious conditions such as bipolar disorder or borderline personality disorder. Do you have any experience with these conditions (either yourself, someone in your family, or someone close to you)? What are your opinions about people with mental health conditions? What, if anything, do you believe is important to know when considering the testimony of these individuals?

6) The defense objects to inclusion of the following question (Question 55 on the government’s proposed questionnaire):

Over the past few years, the “Me Too” movement has sparked a national debate on sexual assault and harassment. Some people feel that the “Me Too” movement has been a good thing because it has raised awareness about a problem in society and has increased accountability. Other people feel that many people accused of sexual harassment or sexual assault these days are being targeted for the purpose of revenge or financial gain. What are your thoughts about this issue?

7) The defense objects to inclusion of the following question

(Question 56 on the government’s proposed questionnaire):

Some people believe that individuals who file lawsuits relating to sexual assault or harassment are looking for a handout, while others believe that those who are assaulted or harassed are entitled to financial compensation for abuse. What are your thoughts on this issue?

8) The defense objects to inclusion of the following question

(Question 57 on the government’s proposed questionnaire):

The defendant has been charged with four counts of perjury, or lying under oath. Do you believe it is fair to charge someone with a crime for lying under oath, even if the truth might be embarrassing?

9) The defense objects to including the (italicized) words “the defendant” in the following question (Question 59 on the government’s proposed questionnaire), and further suggests removing the (italicized) words “the nature of your relationship” in the follow-up question. The defense agrees to inclusion of the remaining text:

Do you know or have you seen, read, or heard anything about *the defendant* Mr. Tony Daniel Klein?

If “Yes,” please explain *the nature of your relationship*.

10) The defense objects to inclusion of the following question

(Question 64 on the government’s proposed questionnaire):

If you are selected to serve on the jury for this case, will you be able to render a verdict (a) solely on the evidence presented at trial, (b) in accordance with the Court’s instructions on the law, (c) disregarding any other ideas, notions, or beliefs about the law that you may have encountered, and (d) not based on sympathy or any other impermissible bias?

Respectfully Submitted this 12th day of April, 2023:

/s/ Matthew G. McHenry

Matthew G. McHenry
Counsel for Tony Klein